IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1695 of 2001
to
FIRST APPEALNo 1734 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER
Versus
ANILBHAI CHHOTABHAI

Appearance:
Mr.Mukesh Patel, learned
ASST. GOVERNMENT PLEADER for appellants
MR PRASHANT MANKAD for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 24/04/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. These 40 First Appeals under Sec.54 of the Land Acquisition Act (hereinafter referred to as 'the Act')

read with Sec.96 of the Code of Civil Procedure are preferred from the common Judgment and order of the learned 8th Joint Civil Judge (S.D.), Vadodara in main Land Acquisition Reference Case No.646/97 disposed of alongwith the cognate References.

2. The lands in question are of the village Kayavarohan, Taluka Dabhoi, District Vadodara which were acquired for the purpose of Narmada Canal Scheme No.1 and the relevant Notifications under Sec.4 of the Act were published on 25.5.95, 10.8.95 and 3.8.95. After the notifications, the Land Acquisition Officer had awarded, by his awards dated 4.9.96 and 5.10.96, compensation at the rate of Rs.2.20 per sq.mt. for non irrigated land and Rs.3.30 per sq.mt. for the irrigated land. Being dissatisfied with the awards, the original claimants, who are respondents in the present Appeals, preferred References under Sec.18 of the Act and oral evidence of one of the claimant was led before the Court. The trial Court also relied upon the oral evidence of the Land Acquisition Officer at Exh.89, who admitted that the lands in question were fertile, yielding two to three crops. The other witness of the appellants i.e. the Assistant Agricultural Officer, who was examined at Exh.91, also deposed that the lands in question were fertile and, if irrigated, three crops could be taken. It was deposed on behalf of the claimants that the total yield per Vigha from the lands in question was approximately Rs.60,000/-- to Rs.70,000/-- per year. An earlier award of Land Reference Case No.2815/87 (Main) in which the market value of the land of adjoining village, namely, Lingsthali was assessed at Rs.12.75 per sq.mt. wherein the date of Notification under Sec.4 was 26.10.95 was also produced before the Court at Exh.22. Considering award in respect of comparable land in the adjoining village and the evidence of annual yield, the Court fixed the market price of the acquired land and awarded the compensation at the rate of Rs.39.50 per sq.mt.

3. The learned AGP for the appellants vehemently argued that there was no justification for fixing a higher market price than Rs.12.75 per sq.mt., which was awarded in the case of adjoining village for the lands with the same fertility and in which the Notification under Sec.4 was also issued in the year 1995. It was further argued that the evidence in respect of annual yield was not reliable and ought not to have been considered in absence of any documentary evidence of the sale of any agricultural produce by the claimants. It was however, fairly conceded that no evidence whatsoever

to contradict the figures of yield and the market price thereof was led on behalf of the appellants. The appellants have mainly relied upon the fact that the deposition of the claimant was not supported by any documentary evidence. As against this submission, the learned counsel Mr. Mankad appearing for the original claimants submitted that in absence of better evidence and in absence of any contradictory evidence, the deposition of claimant was rightly relied upon by the trial court.

4. There is consensus that the First Appeals arising from the cases of acquisition of land from the same village have been decided by this Court on 13.2.2001 in First Appeals Nos.6 to 60 of 2001 and in that group of cases also the Notifications under Sec.4 were issued in the year 1995 and after considering the evidence and the award in the case of lands of adjoining villages and annual yield of the lands in question, the market value was fixed at Rs.20/-- per sq.mt. It was submitted that the evidence in the form of annual yield was available in the form of yearly statement in that group of cases, whereas in the facts of the present case the only evidence of annual yield has come in the form of deposition of the claimant. However, it has to be also noted that the claimant, who deposed before the trial court, was cross-examined on behalf of the appellants and the learned AGP failed to show any contradiction having been brought on record in that cross examination. Therefore, there is no reason to wholly discard the evidence, which has come on record in the form of oral deposition of the claimant at Exh.21. In this context, we have to apply the provisions of Sec.23 of the Act as amended by the Gujarat Act of 20 of 1965 under which the Court is, while determining the amount of compensation, required to take into consideration the damage as to the earnings sustained by the interested person. Having regard to whatever evidence that has come on record and considering the claim of actual annual yield as well as the award in the case of lands acquired from the adjoining village and the aforesaid judgment of this Court in First Appeals Nos.6 to 60 of 2001, we are of the opinion that the compensation should be determined at the same rate as determined in the aforesaid earlier judgment of this court. Therefore, these Appeals are required to be partly allowed and the award of compensation at the rate of Rs.39.50 per sq.mt. is required to be modified so as to award total of Rs.20/-- per sq.mt. for the irrigated as well as non irrigated lands in view of the evidence to the effect that the crops and yield were almost the same in respect of all the lands in question.

5. Accordingly all these 40 Appeals are partly allowed and the impugned award is modified to the extent that the respondents - original claimants shall be paid compensation at the rate of Rs.20/-- per sq.mt. and after deducting the amounts originally awarded by the Land Acquisition Officer, the claimants shall be paid the remaining amounts. The impugned judgment and award, as regards the other statutory benefits and reliefs remains intact subject to the above modification. In the facts and circumstances, there shall be no order as to costs. The decree shall be drawn accordingly.

The lands in question having been acquired in the year 1995, it is expected that the claimants shall be paid the amount due to them as expeditiously as possible and preferrably within three months from the date of receipt of the copy of this Judgment.

(M.R.Calla,J)

(D.H.Waghela,J)